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THE CREATION AND TRANSFER OF SHARES IN INCORPORATED JOINT-STOCK COMPANIES.¹

THE shares in every incorporated joint-stock company are originally created by the issue of certificates by the corporation. These certificates are issued in performance of a duty imposed by law upon the corporation, and they are issued to persons who have become entitled by law to have that duty performed in their favor, *i. e.*, have become entitled to be shareholders in the corporation. No person, therefore, can possibly become an original shareholder until this duty has been performed in his favor, however clear his right to be such shareholder may be. Moreover, what is thus true of original shareholders is also true of all subsequent shareholders, namely, that a certificate from the corporation can alone make them shareholders; that without a certificate they can have no more than a right to be shareholders. If it be asked why an original shareholder cannot transfer his shares to whom he pleases, the answer is that shares in a joint-stock corporation are creatures of the law, and that the law does not make them transferable by their owners. Accordingly, a certificate of such shares does not run like negotiable paper, either to bearer or to order; nor, like a deed of real estate, to the person named, his heirs and assigns; nor, like an assignment of personal property, to the person named, his executors, administrators, and assigns; but simply declares that the person named is the owner of so many shares.

If it be asked how the corporation, after issuing certificates for all the shares authorized by law, can issue any more certificates, the answer is, first, that any shareholder may surrender his certificate to the corporation, and thus extinguish the shares which it represents, and thereupon he will be entitled to have a new certificate for the same number of shares issued to any person designated by him; secondly, that, when a natural person to whom a certifi-

¹ The following observations were prepared merely as a part of a lecture on the cases of *Dolder v. Lord Huntingfield*, and *St. Didier v. Lord Huntingfield*, 11 Ves. 283 Cas. in Eq. Pl. 241. It then occurred to the writer that it would be a convenience to the class to have them printed in the HARVARD LAW REVIEW. He did not expect them, however, to occupy a more conspicuous place than among the Notes which follow the leading articles. That they are printed in this place is due entirely to the unsolicited kindness of the Editor.

cate has been issued dies, or an artificial person to whom a certificate has been issued ceases to exist, the shares represented by such certificate become extinguished by operation of law, and thereupon the representative or successor of such person becomes entitled to a new certificate for the same number of shares. Is such representative or successor also entitled to have the new certificate issued, not to himself, but to such other person or persons as he shall designate? In short, can he assign his right to have a new certificate issued? Without undertaking to say that a right to have a duty performed is always assignable, there is no doubt that it is so in many cases. For example, there is no doubt that the right of a legatee to have his legacy paid, or the right of one of the next of kin of a person who has died intestate to receive his distributive share of the personal estate of the latter, is assignable. So a tithe-owner may clearly assign his right to have the tithes set out by the tithe-payer. Indeed, in every case where the owner of property is entitled as such to have some duty performed in respect of such property in order to render his enjoyment of it more perfect and complete, he can of course, by transferring the property, also transfer the right to have the duty performed; and if the right to have a certificate of shares issued does not belong to this category, it is only because the performance of this duty is a condition precedent to the existence of the shares, and so of course to the ownership of them. But the same thing is true of a legacy or a distributive share; for all that the legatee gets from the testator's will is the right to have the duty of paying the legacy performed by the executor, and the performance of that duty is what vests in the legatee the property in the legacy; and, in like manner, all that a next of kin gets from the Statute of Distributions is the right to have the personal property of the intestate divided among the next of kin. So also a tithe-owner does not acquire title to his tenth part until it has been severed from the other nine parts by the tithe-payer, *i. e.*, until the latter has performed the duty of setting out the tithes.

Moreover, when shares in an incorporated joint-stock company are sold, all that the buyer gets from the seller is the right to have the duty of issuing a new certificate in exchange for the old one performed by the corporation. Accordingly, the seller delivers his certificate to the buyer, in order that the latter may be able to perform the condition of surrendering it to the corporation. The seller also delivers to the buyer what purports to be a transfer of

the shares themselves, with a power of attorney to transfer the same on the books of the corporation, but what is in truth only a transfer of the right to have a new certificate issued on the surrender of the old one, and a power of attorney to transfer that right on the books. On the delivery of these two documents to the corporation, the buyer is entitled to a new certificate, and if it be refused, he may file a bill to compel the issue of it.

When a shareholder, being a natural person, dies, or, being an artificial person, ceases to exist, his representative or successor is entitled to a new certificate unconditionally. He is not bound to surrender the old certificate, for that has ceased to be operative; and he is not bound to produce an assignment from the former shareholder, for he has acquired his right by operation of law. Moreover, if he assign his right to receive a new certificate, his assignee is entitled to such certificate on producing the assignment, with a power of attorney to make the assignment on the books. He is not bound to produce and surrender the old certificate, for the reason just stated.

So far, therefore, from there being any doubt as to the assignability of a right to have a new certificate issued, the truth is that it is only by the transfer of such right, either by the act of the shareholder or by operation of law, that the shares themselves can be transferred; and what is called a transfer of shares on the books of the corporation is only a transfer of the right to have a new certificate issued.

It will be seen, therefore, that there is a striking analogy between shares in a corporation and copyhold land; for a title to the latter can be obtained only by grant from the lord of the manor, all of whose grants, moreover, cease upon the death of the grantee, the representative of the latter having no more than a right to call upon the lord for a new grant, and a grantee can transfer his interest only by surrendering it to the lord, and procuring him to grant it anew.

What has been said of shares in corporations is also true in England of stock in the public funds. Therefore, the plaintiff in *St. Didier v. Lord Huntingfield*, as well as the plaintiffs in *Dolder v. Lord Huntingfield*, stated a good case against the Bank of England and the South Sea Company, at least so far as regards the questions above considered; but the relief to which they were respectively entitled was not to have the stock transferred, but to have new certificates issued to themselves. *C. C. Langdell.*